

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ORLANDO WILLIS,)
)
 Movant,)
)
 v.) No. 4:06CV00055 ERW
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Orlando Willis to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [Doc. #1].

Background

Movant was convicted of conspiracy to commit armed bank robbery and aiding and abetting attempted armed bank robbery. See United States v. Willis, No. 4:01CR296(ERW) (E.D. Mo.). On August 16, 2002, movant was sentenced to an aggregate of 275 months imprisonment and five years supervised release. Id. Movant's convictions and sentences were affirmed on appeal. See United States v. Willis, No. 02-3147 (8th Cir., Nov. 18, 2003).

The motion

Movant alleges that his convictions and sentences are invalid under the Supreme Court's decision in Booker v. United States, 125 S. Ct. 738 (2005).

Discussion

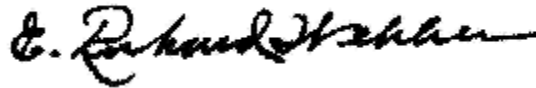
Title 28 U.S.C. § 2255 now provides that a one-year period of limitations applies to § 2255 motions. As applied to this case, movant had until approximately February 16, 2004, to file a § 2255 motion. The instant § 2255 motion was not filed until January 12, 2006. Therefore, the instant § 2255 motion is untimely. Movant argues that the instant motion is timely under § 2255(3) which provides that the limitations period may run from "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." 28 U.S.C. § 2255(3). The Supreme Court's decision in Booker, however, does not apply retroactively to cases on collateral review. See Never Misses A Shot v. United States, 413 F.3d 781, 783-85 (8th Cir. 2005).

In accordance with the foregoing,

IT IS HEREBY ORDERED that movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [Doc. #1] is **DISMISSED**.

An appropriate order shall accompany this memorandum and order.

So Ordered this 1st Day of February, 2006.

A handwritten signature in black ink, appearing to read "E. Richard Webber", written in a cursive style.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE